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FEDERAL MARITIME COMMISSION

46 CFR Part 506

Docket No. 16-13

RIN 3072-AC63

Inflation Adjustment of Civil Monetary Penalties

AGENCY: Federal Maritime Commission.

ACTION: Interim final rule.

SUMMARY: This rule implements the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act) (Sec. 701 of Public Law 11-74). The rule adjusts the maximum amount of each statutory civil penalty subject to Federal Maritime Commission (Commission) jurisdiction for inflation, in accordance with the requirements of that Act. The 2015 Act requires that agencies publish a catch-up adjustment in the penalties in an interim rule by July 1, 2016, and that agencies adjust penalties yearly thereafter.

DATES: This rule is effective on August 1, 2016.

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SUPPLEMENTARY INFORMATION: This rule implements the 2015 Act, which became effective on November 2, 2015. The 2015 Act further amends the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), Pub. L. No. 101-410, 104 Stat. 890 (codified as

amended at 28 U.S.C. 2461 note), in order to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. The Debt Collection Improvement Act of 1996 (DCIA), Pub. L. No. 104-134, Title III, 31001(s)(1), 110 Stat. 1321-373, originally amended the FCPIAA and required the head of each executive agency to adopt regulations that adjust the maximum civil monetary penalties (CMPs) assessable under its agency's jurisdiction at least every four years to ensure that they continued to maintain their deterrent value.¹ In accordance with the DCIA, the Commission established Part 506 in 1996 and adjusted its penalties.² The Commission further adjusted its civil penalty amounts in 2000, 2009, and 2014.³

The 2015 Act requires that agencies publish a catch-up adjustment in the penalties in an interim rule by July 1, 2016, to become effective no later than August 1, 2016. Following the catch-up adjustment, the 2015 Act requires agencies to adjust CMPs under their jurisdiction annually beginning in 2017 based on changes in the consumer price index using data from October in the previous calendar year.

In order to catch-up CMPs, the 2015 Act requires agencies to identify the year the civil penalty was established or last adjusted by statute or regulation *other than* pursuant to the FCPIAA.⁴ Catch-up adjustments are based on the percent change between the Consumer Price Index for all Urban Consumers (CPI-U)⁵ for the month of October of the year in which the CMP was established or adjusted (other than through Inflation Adjustment Act adjustments), and the October 2015 CPI-U. In accordance with the 2015 Act, the Office of Management and Budget (OMB) has issued guidance to agencies on implementing the catch-up adjustments and provided

¹ Increased CMPs are applicable only to violations occurring after the increase takes effect.

² 61 FR 52704 (Oct. 8, 1996).

³ 65 FR 49741 (Aug. 15, 2000); 74 FR 38114 (July 28, 2009); 79 FR 37662 (July 2, 2014).

⁴ 5(b)(2); Memorandum for the Heads of Executive Departments and Agencies for the Implementation of the Federal Civil Penalties Inflation Adjustment Act, M-16-06, at 4, February 24, 2016 (OMB Guidance Memo).

⁵ 3(3).

multipliers for agencies to use depending on the year a civil penalty was established or adjusted (other than inflation adjustments). Agencies look at the multiplier corresponding to that year in a table provided by OMB.⁶ Next, agencies multiply the amount of the penalty (not adjusted for inflation) by the amount in the table.⁷ Under the 2015 Act, however, the catch-up increase cannot exceed 150% of the amount that was effective on November 2, 2015.⁸

For example, Section 13 of the Shipping Act of 1984 (1984 Act), 46 U.S.C. 41107, imposes a maximum \$45,000 penalty for a knowing and willful violation of the 1984 Act.⁹ The penalty was established in 1984 for an amount of \$25,000 and has only been adjusted pursuant to the FCPIAA since then. As a result, the Commission multiplied \$25,000 by 2.25867 (the multiplier provided by OMB for 1984) to obtain an adjusted CMP of \$55,467.

The last time the Commission adjusted its CMP *not* pursuant to FCPIAA varies depending on the penalty.¹⁰ Accordingly, the Commission has looked at the multiplier in the table OMB provided to determine the appropriate adjustment for its civil penalties. In order to provide some clarity, the table below shows the non-inflation-adjusted penalty, the year it was established or adjusted (other than under the FCPIAA), the multiplier provided by OMB, and the result of applying the multiplier (rounded to the nearest dollar per the statute). The table also shows 250% of the amount of the penalty in November 2015 (2015 Act Cap). The new adjusted maximum penalty is the lesser of (1) the amount using the multiplier and (2) 250% of the amount of the penalty in November 2015.

⁶ *Id.*

⁷ *Id.* The amount of the catch-up penalty cannot exceed 250% of the amount that was effective on November 2, 2015 which would be \$112,500 for a violation of Section 13.

⁸ The 150 percent limitation in the 2015 Act is on the amount of the increase. The actual adjusted penalty levels, however are capped at 250 percent of the levels in effect on November 2, 2015. M-16-06, OMB guidance memo, at 3; also at 5(b)(2)(C).

⁹ The Commission last adjusted its civil penalties pursuant to FCPIAA in 2014.

¹⁰ Current CMPs at the Commission have been effective since July 11, 2014. 79 FR 37662 (July 2, 2014).

U.S.C. Section	Non-Inflation-Adjusted Penalty	Year	Multiplier	Multiplier Result	2015 Act Cap (250% of 11/2/15 Amount)	New adjusted maximum penalty amount
46 U.S.C. 42304	1,000,000	1988	1.97869	1,978,690	4,000,000	1,978,690
46 U.S.C. 41107(a)	25,000	1984	2.25867	56,467	112,500	56,467
46 U.S.C. 41107(b)	5,000	1984	2.25867	11,293	22,500	11,293
46 U.S.C. 41108(b)	50,000	1984	2.25867	112,934	200,000	112,934
46 U.S.C. 42104	5,000	1990	1.78156	8,908	22,500	8,908
46 U.S.C. 42106	1,000,000	1990	1.78156	1,781,560	4,000,000	1,781,560
46 U.S.C. 42108	50,000	1990	1.78156	89,078	200,000	89,078
46 U.S.C. 44102	5,000 200	1966	7.22912	36,146 1,446	22,500 750	22,500 750
46 U.S.C. 44103	5,000 200	1966	7.22912	36,146 1,446	22,500 750	22,500 750
31 U.S.C. 3802(a)(1)	5,000	1986	2.15628	10,781	22,500	10,781
31 U.S.C. 3802(a)(2)	5,000	1986	2.15628	10,781	22,500	10,781

The new formula may result in a lower penalty than the current penalty. The catch-up penalty for 46 U.S.C. 42104 of \$8,908, is actually lower than the current penalty of \$9,000. This results from two things: 1) the lack of a specific penalty for a violation of 46 U.S.C. 42104 until 1990; and 2) using a multiplier based on the year the penalty was established or modified that excludes adjustments due to the FCPIAA. The later a penalty was established that excludes adjustments due to the FCPIAA, the smaller the multiplier. In this example, the latest penalty amount that excludes adjustments due to the FCPIAA for violating 46 U.S.C. 42104 is \$5,000, established in 1990. The \$5,000 penalty, therefore, is multiplied by 1.78156 percent to get the adjusted penalty of \$8,908.

In contrast, the oldest non-FCPIAA penalty for violating 46 U.S.C. 44103 was established in 1966 in the amount of \$5,000. Accordingly, using the required table, such amount is multiplied by 7.22912 percent to get the adjusted penalty of \$22,500.

The 2015 Act also requires that agencies round up any increases in civil monetary penalties by a dollar regardless of the amount of the penalty, which differs from the prior rounding system that was based on the amount of a penalty. The penalty in 46 U.S.C. 42104 was between \$1,000 and \$10,000, and increases were therefore rounded to the nearest \$1,000 (often the next highest \$1,000), resulting in higher adjusted amounts.¹¹

The Commission is also making a number of changes to other sections in part 506 to reflect the amendments made by the 2015 Act, including the frequency and calculation of future increases, how increases are rounded, and when they apply.

This interim final rule is issued without prior public notice or opportunity for public comment. Under the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), a final rule may be issued without notice and comment if the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest. In this instance, the Commission finds, for good cause, that solicitation of public comment on this final rule is unnecessary and impractical.

Specifically, Congress has mandated that the agency make the catch-up inflation adjustments through an interim final rule, and agencies are not required to conduct notice and comment prior to promulgation. The Commission, under the FCPIAA as amended by the 2015 Act, is required to make the adjustment to the civil monetary penalties according to a formula specified in the statute. The regulation requires ministerial, technical computations that are noncontroversial.

¹¹ See 46 CFR 506.4.

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Because the Commission has determined that notice and comment are not required under the APA for this rulemaking, the requirements of the RFA do not apply and no regulatory flexibility analysis was prepared.

The rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995, as amended. Therefore, Office of Management and Budget review is not required.

This regulatory action is not a major rule as defined under 5 U.S.C. 804(2).

List of Subjects in 46 CFR Part 506

Administrative practice and procedure, Penalties.

For the reasons stated in the preamble, Part 506 of title 46 of the Code of Federal Regulations is amended as follows:

PART 506—CIVIL MONETARY PENALTY INFLATION ADJUSTMENT

1. The authority citation for part 506 continues to read as follows:

Authority: 28 U.S.C. 2461.

2. Revise § 506.1 to read as follows:

§ 506.1 Scope and purpose.

The purpose of this part is to establish a mechanism for the regular adjustment for inflation of monetary penalties and to adjust such penalties in conformity with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2641 note) as originally amended by the

Debt Collection Improvement Act of 1996, Public Law 104-134, April 26, 1996, and currently amended by the Federal Civil Penalties Inflation Act Adjustment Improvements Act of 2015, Public Law 114-74, in order to maintain the deterrent effect of civil monetary penalties and to promote compliance with the law.

3. In § 506.3, revise the introductory text to read as follows:

§ 506.3 Civil monetary penalty inflation adjustment.

The Commission shall, not later than August 1, 2016, and at least every year thereafter---

4. Revise § 506.4 to read as follows:

§ 506.4 Cost of living adjustments of civil monetary penalties.

(a) The inflation adjustment under § 506.3 will initially be determined by increasing the maximum civil monetary penalty for each civil monetary penalty by the initial cost-of-living adjustment. The inflation adjustment will subsequently be determined by increasing the maximum civil monetary penalty for each civil monetary penalty by the cost-of-living adjustment. Any increase determined under this section shall be rounded to the nearest multiple of \$1.

(b) *Inflation adjustment.* For purposes of paragraph (a) of this section, the term ‘cost-of-living adjustment’ means the percentage (if any) for each civil monetary penalty by which the Consumer Price Index for the month of October preceding the adjustment exceeds the Consumer Price Index for the month of October 1 year before the month of October preceding the adjustment.

(c) *Initial adjustment.* For purposes of paragraph (a) of this section, the term ‘initial cost-of-living-adjustment’ means the percentage (if any) for each civil monetary penalty by

which the Consumer Price Index for the month of October, 2015 exceeds the Consumer Price Index for the month of October of the calendar year during which the amount of such civil monetary penalty was established or adjusted under a provision of law of civil monetary penalty. The initial cost-of-living adjustment may not exceed 150 percent of such penalty on November 2, 2015, the date of the enactment of the Federal Civil Penalties Inflation Act Adjustment Improvements Act of 2015.

(d) *Inflation adjustment.* Maximum Civil Monetary Penalties within the jurisdiction of the Federal Maritime Commission are adjusted for inflation as follows:

United States Code Citation	Civil Monetary Penalty description	Maximum penalty amount prior to August 1, 2016	New adjusted maximum penalty amount as of August 1, 2016
46 U.S.C. 42304	Adverse impact on U.S. carriers by foreign shipping practices	1,600,000	1,978,690
46 U.S.C. 41107(a)	Knowing and Willful violation/ Shipping Act of 1984, or Commission regulation or order	45,000	56,467
46 U.S.C. 41107(b)	Violation of Shipping Act of 1984, Commission regulation or order, not knowing and willful	9,000	11,293
46 U.S.C. 41108(b)	Operating in foreign commerce after tariff suspension	80,000	112,934
46 U.S.C. 42104	Failure to provide required reports, etc./ Merchant Marine Act of 1920	9,000	8,908
46 U.S.C. 42106	Adverse shipping conditions/Merchant Marine Act of 1920	1,600,000	1,781,560
46 U.S.C. 42108	Operating after tariff or service contract suspension/Merchant Marine Act of 1920	80,000	89,078
46 U.S.C. 44102	Failure to establish financial responsibility for non-performance	9,000 300	22,500 750

	of transportation		
46 U.S.C. 44103	Failure to establish financial responsibility for death or injury	9,000 300	22,500 750
31 U.S.C. 3802(a)(1)	Program Fraud Civil Remedies Act/makes false claim	9,000	10,781
31 U.S.C. 3802(a)(2)	Program Fraud Civil Remedies Act/giving false statement	9,000	10,781

5. Revise § 506.5 to read as follows:

§ 506.5 Application of increase to violations.

Any adjustment in a civil monetary penalty under this part shall apply only to civil monetary penalties, including those whose associated violation predated such increase, which are assessed after the date the adjustment takes effect.

By the Commission.

Rachel E. Dickon
Assistant Secretary

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